

## Federal Mediation and Conciliation Service

## § 1450.10

### § 1450.6 Informal action.

Nothing contained in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

### § 1450.7 Return of property.

Nothing contained in this regulation is intended to deter FMCS from demanding the return of specific property or from demanding, the return of the property or the payment of its value.

### § 1450.8 Omissions not a defense.

The failure of FMCS to comply with any provision in this regulation shall not serve as a defense to the debt.

## Subpart B—Administrative Offset— Consumer Reporting Agen- cies—Contracting for Collec- tion

### § 1450.9 Demand for payment.

Prior to making an administrative offset, demand for payment will be made as stated below:

(a) Written demands shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, FMCS will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this subpart including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of:

(1) The basis for the indebtedness and the right of the debtor to request review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (subpart D of this regulation) and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered. FMCS will exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. Apart from this, there is no prescribed format for the demand letters.

(c) As appropriate to the circumstances, FMCS may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) FMCS will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtor who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiations of, at any time during, or after completion of the demand cycle, FMCS determines to pursue administrative offset, then the requirements specified in §§1450.10 and 1450.11, as applicable, will be met. The availability of funds for offset and the agency determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§1450.10 and 1450.11 as applicable.

### § 1450.10 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims

which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term “administrative offset” is the same as stated in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. FMCS will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government’s interests. In appropriate circumstances, FMCS may give due consideration to the debtor’s financial condition and is not required to use offset in every instance in which there is an available source of funds. FMCS may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee’s performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: Written notice of the nature and amount of the debt, and the agency’s intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. FMCS may also make requests for offset to other agencies holding funds payable to the debtor, and process requests for offset that are received from other agencies.

(1) FMCS will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government’s interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, FMCS will normally accept a

repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under §1450.9, or some other regulatory or statutory authority, such as pursuant to a notice of audit allowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) FMCS may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government’s right to collect the debt first accrued, unless facts material to the Government’s right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law, regarding the accrual of debts, such as 28 U.S.C. 2415.

(4) FMCS is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local Governments;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) FMCS may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if:

(i) Failure to take the offset would substantially prejudice the Government’s ability to collect the debt, and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) FMCS will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review: (1) For purposes of this section, whenever FMCS is required to provide a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when:

(i) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(ii) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the FMCS will carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on

the request for waiver or reconsideration based upon a "paper hearing" that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset. Generally, FMCS will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and that full compliance with the provisions of this section has taken place.

(g) When collecting multiple debts by administrative offset, FMCS will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 1450.11 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.**

(a) Unless otherwise prohibited by law, FMCS may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a)